IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 841 of 1997

with

CRIMINAL APPEAL No 918 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MITESH KISHORCHAND RAVAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 841 of 1997
   MR KV SHELAT for Petitioner No. 1
   MR SS PATEL A.P.P. for Respondent No. 1
2. Criminal Appeal No. 918 of 1997
   MR KB ANANDJIWALA for Petitioner No. 1
   MR SS PATEL A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI
and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 05/02/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. Both these appeals arise from the judgment and order of conviction and sentence delivered by the learned Additional Sessions Judge Kheda at Nadiad in Sessions Case no.109 of 1995 dated 22nd July, 1997. Criminal Appeal no.841 of 1997 has been filed by original accused no.3 Mitesh Kishorchand Raval and Criminal Appeal no.918 of 1997 has been filed by Bharatsinh Kalyansinh Mahida for challenging the said judgment and order of conviction and sentence. Both these appeals are, therefore, heard together and disposed of by a common judgment. For the sake of convenience the appellants of both these appeals are referred to by their original position in the Sessions case i.e. accused no.3 and accused no.6 respectively. By the aforesaid judgment they have been convicted for offence made punishable under Section 302 read with Section 120-B of the Indian Penal Code and they have been sentenced to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine R.I. for two months. Accused no.3 has been convicted for committing offence made punishable under Section 364 of the Indian Penal Code and he has been sentenced to suffer imprisonment for seven years and to pay fine of Rs.5,000/-, in default of payment of fine R.I. for one month. Accused no.6 has been convicted for committing offence made punishable under Section 302 of the Indian Penal Code and he has been sentenced to suffer imprisonment for life and to pay fine of Rs.10,000/-, in default of payment of fine further R.I. for two years. He has also been convicted for offence under Section 364 of the Indian Penal Code and he has been sentenced to suffer R.I. for ten years and to pay fine of Rs.10,000/-. Both accused no.3 and accused no.6 are also convicted for committing offence under Section 135 of the Bombay Arms Act, but no separate sentence has been awarded for the same. The sentences are ordered to run concurrently.

2. The case of the prosecution in brief can be stated as under :-

2.1. Original accused nos.1 and 2 namely Rajubhai Karsanbhai Vaghela and Shaileshbhai Karsanbhai Vaghela are brothers. They have sister named Ushaben. The deceased Rameshbhai Chhababhai Thakore resided in the

vicinity of the house of original accused nos.1 and 2. He developed intimacy with Ushaben and both of them decided to get married. However, this decision was strongly resisted by the brothers of Ushaben namely accused nos.1 and 2. In view thereof, Ushaben secretly got married to deceased and started living with him. As a result of this, ultimately, members of the family of accused nos.1 and 2 severed all the relation with Ushaben to such an extent that even on the day of "Rakshabandhan" a Rakhi sent by Ushaben to her brothers had not been accepted by them. It is on record that accused nos.1 and 2 have other four brothers and five sisters over and above Ushaben. However, they are not, in any way, connected with this case.

2.2. It is the case of the prosecution that accused nos.1 and 2 were friendly with accused no.6 and they ultimately, hatched out conspiracy to do away the deceased. It is further the case of the prosecution that original accused nos.3, 4 and 5 actively helped accused nos.1, 2 and 6 in accomplishing the object of the conspiracy namely to commit murder of Rameshbhai Chhababhai Thakore. Accused no.3 is alleged to have abducted the deceased from Khokhra area in Maninagar, in Maruti van bearing registration no.GJI R 2230 on 14th November, 1994 when he had gone to the goldsmith to collect the ring which was pledged with him. It is the case of the prosecution that prior to this, accused no.6 who was friendly with accused nos.1 and 2 had taken the deceased on his motorbike and had even beaten him. This had happened during the "Diwali" festival days. Since, her husband did not return home, Ushaben started making inquiry regarding the whereabouts of her husband. While she was inquiring about her husband she came near a pan-bidi shop of her brother accused no.2 and she found that even accused no.6 was standing there. When she inquired from her brother about her husband, accused no.6 took off the cap which he was wearing and showed his clean shaven head to Ushaben, to sarcastically indicate that her husband was no more. It is the case of the prosecution that on 15th November, 1994 at about 9:00 p.m. the Police of Amraiwadi Police Station came to the residence of Ushaben alongwith one constable from Sojitra Police Station and informed her that her husband had met with an accident and that he was lying in the hospital in serious condition. From her house Ushaben was taken to Amraiwadi Police Station where she was informed that her husband had been murdered by three persons at a place under Sojitra Police Station jurisdiction on 14th November, 1994. She, therefore, approached accused no.2 i.e. her brother Shaileshbhai Karsanbhai Vaghela with a

request to help her, however, he decline to do so. She, therefore, went alongwith her mother-in-law to Sojitra Police Station alongwith head constable Lallubhai and there she identified the blood stained clothes which were worn by the deceased at the time when he left the home last. She also identified the photograph of her husband which was shown to her by Police of Sojitra Police Station. Later on, she was even taken to the hospital at Sojitra where she identified the dead body of her husband.

2.3. It is the case of the prosecution that the incident came into light on the information lodged by one Narsinhbhai Chhotabhai Patel resident of village Malataj, who approached the Sojitra Police Station and informed the police that while he was sitting on the outskirts of the village round about at 5:00 p.m. one Rameshbhai Kuberbhai Patel and one Vinubhai Mohanbhai Bariya came to him and informed him that three unknown persons had committed murder of one person near the canal adjoining the agricultural land of Arvindbhai Mukhibhai, whose identity was also not known to them. It was further informed by Narsinhbhai Chhotabhai Patel that Rameshbhai Kuberbhai Patel and Vinubhai Mohanbhai Bariya brought the victim, and they found him to be alive and on inquiry he informed them that he was the resident of Khokhra and the persons who had assaulted him were the residents of Maninagar area.

2.4. On receipt of this information, the Police went to the place of incident and removed the dead body to the hospital for postmortem examination. The Police also commenced the usual investigation and in the course of the same they detected that accused nos.1, 2 and 6 were responsible for committing the present crime. It is also the case of the prosecution that accused no.6 was already undergoing sentence of imprisonment for life in connection with some other offence and it was while on parol he had committed the present offence. Accused no.3 was arrested by the Police on 24th November 1994 whereas accused no.6 who kept on absconding was arrested by Detection of Crime Branch, Ahmedabad City, for possession of unauthorised revolver on 7th January, 1995. The Investigating Officer of this case having received information to this effect from Ahmedabad City Control, immediately approached the Court of Petlad and obtain transfer warrant to take the custody of accused no.6 in connection with the present offence.

2.5. It is the case of the prosecution that in the course of investigation accused no.3 pointed out the

route on which they had travelled from Maninagar area to the canal near the field of Arvindbhai Mukhibhai while abducting the deceased in Maruti Van and panchnama to that effect was drawn by the Investigating Officer. Similarly, according to the prosecution, accused no.6 on 15th November, 1995 showed his willingness to point out the place at which he had concealed the weapon which was used for committing the offence and pursuant to that he took the Investigating Party to a place in Maninagar which was a deserted house and from beneath a mattress lying on the cot he took out two knives, out of which one knife was blood stained. The Investigating Officer also in the course of the investigation drew various panchnamas such as the panchnama of the clothes of the deceased; arrest panchnama of the accused; and also recorded statements of various persons who were acquainted with the facts of this case and ultimately, upon the completion of the investigation submitted chargesheet against all the original accused i.e. nos.1 to 6 for committing the aforesaid offences in the Court of concerned Magistrate who committed the case to the Court of Sessions as the offence under Section 302 alleged against the accused is exclusively triable by the Court of Sessions. At the trial, the learned Sessions Judge, Kheda at Nadiad framed the charge against all the accused on 26th November, 1996. The accused denied the charge and claimed to be tried.

3. In the course of the Trial, the prosecution examined in all twelve witnesses namely; (1) Vinubhai Mohanbhai P.W.1 at Exh.13; (2) Manubhai Bhikabhai P.W.2 at Exh.14; (3) Rameshbhai Kuberbhai P.W.3 a Exh.15; (4) Ushaben Rameshbhai P.W.4 at Exh.16; (5) Bhikabhai Himatbhai P.W.5 at Exh.18; (6) Narharibhai Chhotabhai P.W.6 at Exh.19; (7) Arvindbhai Zaverbhai P.W.7 at Exh.51; (8) Mahendrasinh Manibhai Mahida P.W.8 at Exh.53; (9) Subhashbhai Laxmibhai P.W.9 at Exh.55; (10) Punambhai Desaibhai P.W.10 at Exh.57; (11) Narendrabhai Lakhabhai P.W.11 at Exh.59 and (12) Vinodbhai Dhanjibhai Kharadi P.W.12 at Exh.61. Over and above oral evidence, the prosecution also placed reliance on the documentary evidence in the form of the First Information Report; the postmortem notes; inquest panchnama; panchnama of the scene of the offence and various other panchnamas. At the end of the recording of the evidence, the learned Judge under Section 313 of the Code of Criminal Procedure recorded statements of the accused putting to them the circumstances appearing against them in the evidence with a view to enable them to render the explanation if they so desired. However, from these statements it appears that the defence of the case was that of the general

denial and no specific plea has been pleaded by them. At the end of the Trial, the learned Judge came to the conclusion that the prosecution had failed to prove its case against the original accused nos.1, 2, 4 and 5 and he, therefore, acquitted them of all the charges levelled against them. However, the learned Judge found that accused nos.3 and 6 had committed offences made punishable under Sections 302 and 364 and also under Section 120-B of the Indian Penal Code and ultimately, convicted them for those offences as stated above. It is against these orders of conviction and sentence, accused nos.3 and 6 have approached this Court by filing the aforesaid appeals.

4. We have heard Mr.K.V. Shelat and Mr.K.B. Anandijiwala appearing for accused no.3 and 6 respectively in their appeals and Mr.S.S. Patel learned A.P.P. appearing for the respondent - State in both the appeals.

4.1. Mr.Shelat has submitted that the prosecution has hopelessly failed to prove the case against accused nos.3 and 6 and the Trial Court has committed grave error in convicting them for the offences made punishable under Section 302 reach with Section 120-B of the Indian Penal Code and for offence under Section 364 of the Indian Penal Code. He has further submitted that there is no evidence on record which would connect the accused no.3 with the present crime. He has further submitted that even the circumstances on record do not point to the guilt of this accused inasmuch as not a single circumstance on the record of the case is sufficient enough to indicate that accused no.3 in any way is connected with the present crime. He has further submitted that merely because some blood stains have been detected by the officers of the Forensic Science Laboratory from the Maruti van which is alleged to have been used in abducting the deceased, it cannot be said that accused no.3 is responsible for either abducting the deceased or in any way aided or abetted accused no.6 in committing offence under Section 302 of the Indian Penal Code. He has also submitted that the reliance placed by the Trial Court on the evidence of the Investigating Officer namely Mr.Tadvi and the panchnama which is supposed to have been dictated by accused no.3 himself while pointing out the route on which he had travelled with the deceased in the said Maruti Van are not at all sufficient to base the conviction of accused no.3. He has further submitted that even legally the statements made by accused no.3 in the said panchnama cannot be looked into as the same are not admissible in evidence

since they are in the nature of confessions and they have been made by accused no.3 before the police while he was already made an accused for this case. He has lastly submitted that since the orders of conviction and sentence are against law and evidence on record, the appeal may be allowed and accused no.3 may be acquitted.

4.2. Similarly Mr.Anandjiwala has submitted that there is no evidence against his client i.e. accused no.6 and his conviction has been passed on the material which is not at all admissible in the evidence. He has further submitted that the learned Trial Court has merely relied on the panchnamas which do not form the substantive evidence but they are merely corroborative pieces of evidence and on the basis of such panchnamas alone, no conviction for offence under Section 302 or for any other offence can be based. He has also submitted that the material witnesses examined by the prosecution have not supported its case and there is no other evidence of any nature which involves accused no.6 in the crime and, therefore, his conviction for the aforesaid offences by the learned Trial Judge is absolutely erroneous. He has lastly submitted that his appeal deserves to be allowed and accused no.6 is required to be acquitted.

4.3. As against that, Mr.S.S. Patel learned A.P.P. has supported the judgment and order of conviction and sentence passed by the Trial Court and has submitted that considering the entire evidence on record including the documentary evidence the guilt of accused nos.3 and 6 is adequately established by the prosecution and the orders of conviction and sentence passed by the learned Trial Court are proper, just and legal and no interference is required by this Court. He has further submitted that even when the material witness have not supported the case of the prosecution and in absence of any direct evidence, the circumstantial evidence on record plays a great role and considering the circumstances which have been brought on record of this case they form a complete chain leading to the only hypothesis i.e. the guilt of the accused and nothing else. He has, therefore, submitted that both these appeals have no merit and they are required to be dismissed.

5. With a view to reappreciate the evidence adduced before the Trial Court the oral as well as the documentary evidence, we have carefully seen the record and have given our careful consideration to the submissions made by both the sides.

6. From the record of the case, it clearly appears

that the original accused nos.1, 2 and 6 have been charged with hatching a conspiracy to commit murder of deceased - Rameshbhai Chhababhai Thakore, as accused nos.1 and 2 who happened to be brothers of Ushaben i.e. wife of the deceased, did not like her marriage with the deceased. In pursuance of that conspiracy other accused namely accused nos.3, 4 and 5 were taken into confidence by accused nos.1, 2 and 6 to seek their help and active participation in the crime was sought. To establish these allegations, the prosecution has examined P.W.1 Vinubhai Mohanbhai at Exh.13. He has stated in the examination-in-chief that on 14th November, 1994 he was working in the field of one Arvindbhai Zaverbhai Patel. Over and above him there were four other labourers in that field. He has further stated that on that day he did not hear any shouts nor did he see anything. He has further stated that he had not seen any Maruti van parked in the field of Arvindbhai. He has stated that he knew Rameshbhai Kuberbhai of village Malataj. He did not inform him that there was any dead body lying near the canal. However, Rameshbhai had been there when he received information from somebody. This witness has been declared hostile by the learned Public Prosecutor and he has been permitted to cross-examine this witness by the Court. In the cross-examination the witness has been confronted with certain statements which have been made by him before the Police. The defence has not chosen to cross-examine him. Similarly, the evidence of P.W.2 Manubhai Bhikabhai at Exh.14 does not help the case of the prosecution and he has been declared hostile by the learned Public Prosecutor. P.W.3 Rameshbhai Kuberbhai at Exh.15 states that his land is situated on the outskirts of village Malataj and while he was sitting in his room situated in the field he saw a crowd. He, therefore, went there and saw that one person was lying on the ground and he had received injury on his stomach and he was bleeding. According to this witness, the injured person did not utter a word. Except this, this witness has not stated anything else in his evidence. There is no cross-examination by the defence. P.W.4 Ushaben Rameshbhai at Exh.16 is the widow of deceased Rameshbhai Chhababhai Thakore. In her examination-in-chief, she has stated that she had contracted a civil marriage with deceased Rameshbhai who was not liked by her brothers as her husband did not do any work. She has further stated that after her marriage her brothers did not kept any relation with her and even a Rakhi sent by her was not accepted by them. She has also stated that her husband was not beaten by accused Shailesh. She has further stated that she did not know Bharatsinh Darbar and he had never taken her husband on

his motor bike. She has further stated that she did not know who Bharat and Pravin were. It is her say that on 14th November, 1994 her husband had gone out telling her that he was going to the shop of goldsmith to get released his ring which was pledged with the goldsmith and thereafter he never returned. In the evening she was contacted by the Police with the photograph of her husband and they informed her that her husband had met with an accident at Sojitra and he was admitted in a private hospital. She has further stated that before the Police approached her she had never met Bharatsinh or Shailesh. According to her, the Police first took her to Amraiwadi Police Station and thereafter she was taken to Sojitra Police Station by the Police of Sojitra. At the said Police Station she was shown the clothes of her husband which were blood stained and she identified them to be that of her husband. In the Court room while giving evidence, she identified accused nos.1 and 2 i.e. Rajubhai and Shaileshbhai. However, she did not identified any other accused. This witness was cross-examined by the learned Public Prosecutor with the permission of the Court without declaring her hostile. In the cross-examination by the learned Prosecutor she has been confronted with her previous statements with the Police and she had denied to have not made such statements. In the cross-examination by the defence she has stated that her husband did not have cordial relation with one Mahendrabhai Kosti a Police man and on several occasions they had quarrels. As a result of that, they had filed cases against each other. She has also stated that Mahendrabhai used to consume liquor and he used to do money dealings with her husband. She has further stated that on account of these money dealings there were often quarrels between the two. She has also admitted that her husband did not do any work and he was indulging into illegal activities. She has also admitted that her husband had many enemies and many a times he used to return home after being beaten by his enemies.

7. P.W.5 Bhikabhai Himatbhai at Exh.18 in his examination-in-chief has stated that he was a friend of accused no.3 and he was known to him for the last five to six years. He has stated that accused no.3 owned one Maruti van bearing no.2230 as well as one scooter. He has further stated that on 14th November, 1994 accused no.3 had not met him. He has further stated that in the month of December, either in the first or second week, he had inquired from accused no.3 that police had been there to interrogate him and at that time accused no.3 had told him that his van had met with an accident when somebody had taken it away while it was kept at his maternal

uncle's place and because of that his name is being involved. This witness is also declared hostile by the prosecution. In the cross-examination by the learned P.P. he has been confronted with certain parts of his Police Statements and he has denied to have made such statements before the Police. P.W.6 Narharibhai Chhotabhai at Exh.10 is the person who informed the Police about the dead body of a person lying on the bank of the canal near the field of Rameshbhai Kuberbhai. The Police reduced the information given by this witness and it is in writing which is treated as First Information Report at Exh.20. His evidence does not help the prosecution at all. P.W.7 Arvindbhai Zaverbhai Patel at Exh.51 is a panch witness who was summoned by the Police when the panchnama of the Maruti van seized by the Police was being drawn. He has stated in his evidence that he did not know the registration number of the Maruti van. He has also stated that he had not seen any blood stains in the Maruti van. Further he has stated that the colour of the Maruti van was blue and he did not know to whom it belonged. In the cross-examination of this witness he has stated that the colour of the Maruti van was blue i.e. it was like sky-blue colour. He has denied the suggestion made by the defence that he had never gone to Ahmedabad to act as a panch. P.W.8 Mahendrasinh Manibhai Mahida at Exh.53 has acted as a panch witness of the inquest panchnama of the dead body of Rameshbhai Thakore. He has also not supported the prosecution and he was treated as hostile witness. P.W.9 Subhashbhai Laxmibhai at Exh.55 was summoned on 21st November, 1994 to act as panch and he has stated in his evidence that on that day he had seen one dead body lying in a bleeding condition. He has further stated that the clothes put on by the deceased person were also blood stained. He has stated that since there were blood stains all over the body he did not notice anything else on the body. He has also stated that there was one Maruti van of blue colour and the Police told him that the van as well as dead body was of a person from the city of Ahmedabad. In the cross-examination he has stated that he was a Sarpanch of the village and as and when the Police summoned him he went to the Police. P.W.10 Punambhai Desaibhai at Exh.55 has acted as panch of the seizure of the clothes. P.W.11 Narendrabhai Lakhabhai at Exh.59 has been examined as he had acted as a panch while discovery of the weapons used in commission of the crime was made. His evidence clearly shows that no accused person was present when the weapons were discovered from the house situated in Khokhra locality of Maninagar area. He has further stated that on the knife which was seized by the Police from that house no blood stains were found. P.W.12

Vinodbhai Dhanjibhai Kharadi at Exh.61 is the Investigating Officer. He has stated in his examination-in-chief that on 14th November, 1994 he was working as Police Sub Inspector at Sojitra Police Station. He has stated that he had recorded the complaint given by Narharibhai Chhotabhai Patel which is at Exh.20 on record. He has further stated that when he learnt that the deceased was from Khokhra area of Maninagar, Ahmedabad he had sent Head Constable Lallubhai and he found out that it was the dead body of the husband of Ushaben who was residing in that area. He has also stated that in the course of investigation, names of present accused nos.3 and 6 had been involved and, therefore, he had arrested them. However, accused no.6 could not be immediately apprehended as he was absconding. He has further stated that accused no.6 was already under going sentence of imprisonment for life in connection with some other case and he had committed the present offence while he was on parol. His evidence further shows that Ushaben's marriage with deceased had caused resentment with the brothers and the remaining sisters. In the evidence of this witness certain documents have also been produced by the prosecution.

8. At this juncture, it may be noted here that so far the medical evidence on record of the case is concerned, it only consists of the postmortem notes which have been exhibited with the consent of the defence. The prosecution has not chosen to examine the concerned Medical Officer who performed the postmortem. To come to the conclusion that the deceased had died a homicidal death, there is no other material on record to base this finding. The note of the postmortem shows that the deceased had died due to hypo volomeic shock due to injury on right lung. The postmortem note and in particular column (17) indicates four injuries having been received by the deceased and one of these injuries has caused damage to the main internal organ namely lung which has resulted into his death. Thus, the postmortem notes have not been challenged by the defence. Though the Medical Officer has not been examined by the prosecution, there is no hesitation for us to hold that the deceased had died a homicidal death.

9. The question now that would arise for our consideration is whether accused nos.3 and 6 are guilty of committing murder of the deceased. As discussed above, there is no direct evidence of any witness on this point. The aforesaid discussion clearly shows that none of the witnesses examined by the prosecution involves either accused no.3 or accused no.6 either in the

incident of abduction or in the commission of the murder. There is nothing on record to show that it was accused no.3 who on the fateful day abducted the deceased from the Khokhra locality of Maninagar area and he alongwith other accused brought him to the canal near the field of Rameshbhai Kuberbhai. Similarly, there is no direct evidence on record to show that at this place it was accused nos.3 and 6 who had caused fatal injuries to the deceased by means of knife. The prosecution case is that after accused no.3 brought deceased at the scene of offence, two accused caught hold of him, whereas accused no.6 inflicted knife blows on his stomach. There is no evidence on record to substantiate these allegations. Not only that, it is also not clear from the record whether the assault took place while the deceased was sitting in Maruti van or that he was first brought out from the Maruti van and then assaulted. Merely because some blood stains of the blood group of the deceased have been found in the van, it does not mean that the assault on the deceased had taken place while he was in the Maruti van itself. One cannot forget the fact that the prosecution has not made any attempt to rule out any possibility of the blood stains found in the van to be of someone else and not of the accused. The learned Trial Court has heavily banked upon the evidence of Investigating Officer Shri Kharadi and the panchnama drawn by him wherein accused no.3 is alleged to have pointed out the route by which he had travelled alongwith the deceased when he was abducted from Maninagar in a Maruti van brought to the bank of canal near the field of Rameshbhai Kuberbhai. It is not understood under what provisions this panchnama has been drawn. Not only that this panchnama has been drawn at the time when accused no.3 had already become accused of this case. This panchnama does not pertain to the discovery of any incriminating article at the instance of accused no.3. In such circumstances, it merely amounts to statement made by the accused before the Police in the course of investigation which is not admissible in evidence. In that view of the matter, there is nothing on record to indicate that it was accused no.3 who had abducted the deceased from Maninagar area in a Maruti van with a view to commit his murder and as as result of that the deceased was brought at the scene of offence and he was fatally assaulted by accused no.6. So far the blood stains found in the Maruti van are concerned, from the record it appears that there are some scattered blood stains found on the rubber mat of the Maruti van as well as on some other portion of the body of the Maruti van by the Officer of the Forensic Science Laboratory. On Laboratory examination it appears that they are blood

stains of "B" group i.e. blood group of deceased himself. However, in absence of any other evidence ruling out the possibility of the blood stains being of some other person no conclusion can be drawn that these blood stains are of the deceased alone and none else. Not only that, from from such a weak piece of evidence, it cannot be said that it was accused no.3 or accused no.6 who was responsible for committing the crime in question. Thus, we find that the conviction of accused no.3 by the Trial Court for the aforesaid offence is absolutely erroneous and it deserves to be quashed and set-aside.

10. So far accused no.6 is concerned except the so called discovery panchnama of the weapons used in the commission of the crime there is nothing else on record which would connect him with the crime i.e. with the offence of committing murder of deceased Rameshbhai. In fact, considering the evidence of panch witness of the discovery of the offending weapons, it clearly appears that according to this witness accused was never present when the discovery of the weapons was made. In view of this clear evidence, it is very difficult to hold that the discovery of the weapon was made at the instance of accused no.6 who had taken the Police to the place where the weapons were concealed by him. If that be so, the discovery of the weapons under Section 27 of the Evidence Act, made by the Police of the incriminating weapons cannot be held to be valid one and that cannot be treated as a piece of evidence against accused no.6. There is no oral evidence which could involve accused no.6 in the present offence nor there is any circumstantial evidence on record which could conclusively prove the guilt of accused no.6. It may also be noted here that accused no.6 is alleged to have entered into the conspiracy of committing murder of deceased Rameshbhai with accused nos.1 and 2. The motive for committing the murder of the deceased was that accused nos.1 and 2 and their family members did not like Ushaben's marriage with him. However, accused nos.1 and 2 have been acquitted by the Trial Court and no acquittal appeal has been preferred by the State. In that view of the matter, it is very strange that for what reason accused no.6 should have committed murder of Rameshbhai. Not only that, but he also cannot be convicted for offence under Section 120-B of the Indian Penal Code. Strangely enough the Trial Court has held that there was conspiracy between accused nos.3 and 6 to abduct and commit murder of deceased Rameshbhai. The prosecution has failed to show that what could be the motive for these two persons to commit murder of deceased Rameshbhai. Moreover, no charge is

framed by the learned Trial Court that there was conspiracy between accused nos.3 and 6 to abduct and commit murder of Rameshbhai. In the circumstances, the conviction of accused no.6 by the Trial Court for the aforesaid offences is absolutely erroneous.

11. When the conviction of accused no.3 and accused no.6 is found to be erroneous their respective appeal deserves to be allowed and conviction and order of sentence passed by the learned Trial Court deserve to be quashed and set aside. In the result, both these appeals are allowed. The judgment and order of conviction and sentence dated 22nd July, 1997 passed by the learned Additional Sessions Judge Kheda at Nadiad in Sessions Case no.109 of 1995 are set aside.

The appellant of Criminal Appeal No.841 of 1997, namely, Mitesh Kishorchand Raval, original accused No.3, is on bail, and his bail bonds shall stand cancelled.

The appellant of Criminal Appeal No.918 of 1997, namely, Bharatsinh Kalyansinh Mahida, original accused No.6, is ordered to be set at liberty forthwith if he is not required in connection with any other case.

The fine, if paid, be refunded to the appellants.
The order with regard to mudammal passed by the learned Trial Court remains as it is.

[M.H. KADRI, J.]

[AKSHAY H. MEHTA, J.]

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